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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 1, 2023

DUSTIN BALCH v. BRITTANIE CILLEY

Appeal from the Juvenile Court for Fentress County
No. 2019-JV-240 Todd Burnett, Judge

No. M2022-01100-COA-R3-JV

A mother appeals from the judgment holding her in criminal contempt of court, denying her motion to dissolve an ex parte no-contact order entered against her, and denying her motion to transfer the case to another county. Upon a thorough review of the record, we affirm the judgment. Due to the passage of time and the position taken by the parties and by the trial court when issuing its ruling, we remand for a new evidentiary hearing on the ex parte order suspending the mother's contact with the children.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and KENNY ARMSTRONG, JJ., joined.

Michael Robert Giaimo, Cookeville, Tennessee, for the appellant, Brittanie Cilley.

Kelly Ann Tollett, Crossville, Tennessee, for the appellee, Dustin Balch.

OPINION

I. BACKGROUND

H.B. and S.B. (“the children”) were born in 2007 and 2009, respectively, to appellant Brittanie Cilley (“Mother”) and appellee Dustin Balch (“Father”). Mother lives in New Hampshire. Father and the children have lived in Cumberland County, Tennessee for approximately three years.

The proceedings underlying this appeal began on February 8, 2022, when the Circuit Court for Fentress County heard an appeal from the Juvenile Court for Fentress County's

(“trial court”) adjudication of a petition for dependency and neglect previously filed against Mother. The appellate record does not include the dependency and neglect petition or a transcript of the February 8 hearing, but does include the Circuit Court’s March 23, 2022 order from the hearing. In that order, the Circuit Court found that the children were of age to communicate their preference as to where they wished to live. After the children testified that they desired to live with Father in Tennessee, the Circuit Court “directed Counsel for the parties to develop a new parenting plan reflecting the children’s preference to stay with their father, and with visits with their mother for half the summer, at Christmas, and some school breaks as can be agreed upon.” The Circuit Court found that “the evidence does not support an adjudication of dependency and neglect,” and dismissed the petition. The Circuit Court prohibited Mother and Father from discussing the case with the children. The parties do not dispute that communicating with the children about the legal proceedings was a problem both before and after February 8, 2022. After the February 8 hearing, Mother and Father developed an agreed parenting plan naming Father as primary residential parent. Under the agreed parenting plan, Mother had 85 days of yearly parenting time, including six summer weeks, and Father had 280 days. The agreed parenting plan was incorporated into the Circuit Court’s March 23, 2022 order.

On March 29, 2022, following the children’s spring break week in New Hampshire, Father filed in the trial court an “ex parte motion to suspend contact and for criminal contempt.” In his motion, Father alleged that Mother and the children’s maternal grandmother had “bombarded” him with text messages stating that S.B. wanted to remain in New Hampshire with Mother. According to Father, the messaging escalated to the point where he contacted his attorney with the concern that S.B. “would not be allowed to fly back to Tennessee at the conclusion of the spring break visit.” In his motion, Father stated that his attorney, the guardian ad litem, and the trial court attended an ex parte conference during which the trial court directed Father’s attorney to advise Mother that an attachment would issue if the children did not return to Tennessee after spring break as scheduled. Father alleged that Mother was so advised “and also advised that criminal charges for custodial interference would be filed against her and . . . her paramour should the children not return.” Father explained that the children returned to Tennessee as scheduled, but that he and they “were stopped by law enforcement at the airport and confronted with the allegation that the children were runaways.” Upon producing a court order, Father was free to leave with the children. Father further alleged that law enforcement arrived at his mother’s home in Wilson County, Tennessee, requesting to speak to S.B. alone, but then left when Father again explained the situation. Father alleged that both encounters with the police were initiated by Mother or someone in her family because no one else knew the children’s whereabouts at that time. Father’s motion further alleged as follows:

[Mother] is in direct violation of the order of this Court and the Circuit [C]ourt by continuing to discuss this case and living arrangements with the minor children.

The children, especially [S.B.], are subject to continued badgering and harassment at the hands of their mother and her family [and] that continued contact with [Mother] and her family poses a serious threat to their mental health and psychological well-being.

[Mother's] and [the maternal grandmother's] actions are intentional, willful, and contemptuous and they should be punished accordingly.

In his prayer for relief, Father asked the trial court to prohibit Mother and any member of her family or household from contacting the children, Father, the children's school, or the children's counselor until further hearing of the matter. He also requested that, upon hearing, Mother be held in criminal contempt "for failure to adhere to the Orders of this Court." The March 29, 2022 motion included a notice of Mother's and the maternal grandmother's constitutional rights. The certificate of service certified that the motion was sent via email to "Brittany [sic] Cilley," but did not specify her email address. At that point in time, Mother was not represented by counsel. She maintains that she never received Father's March 29, 2022 motion.

The trial court then entered an order also dated March 29, 2022, and entitled "ex parte order to suspend contact with Mother." The court found that Mother "is in direct violation of the order of this Court and the Circuit [C]ourt by continuing to discuss this case and living arrangements with the minor children." The trial court found that Mother's "messages show direct attempts to circumvent the court system to take custody of at least [S.B.] without proper court approval or Notice." The trial court ordered that Mother and any member of her family or household were prohibited from contacting the children, Father, the children's school, or the children's counselor until further hearing. The trial court's March 29, 2022 order reserved the matter of criminal contempt for a future hearing which would be held at Mother's request "and in the time afforded by the laws of the State of Tennessee." Mother acknowledges that she received the order via email. She proceeded to retain legal counsel.

On May 13, 2022, Mother moved the trial court to transfer the case to either the Juvenile Court or Circuit Court for Cumberland County, Tennessee, noting that she still resided out of state and the rest of the family resided in Cumberland County. The same day, Mother filed a motion to dissolve the March 29 order and to restore her parenting rights. Both of Mother's motions included a notice of hearing for May 16, 2022.

Upon the parties' agreement, the case proceeded to a hearing on May 23, 2022. Mother, Father, the children, and the guardian ad litem attended. At the outset, there was some confusion as to which motions were to be heard. The trial court noted the pending ex parte motion to suspend contact and for criminal contempt. Mother's counsel noted that he had never seen Father's ex parte motion to suspend contact and for criminal contempt. The guardian ad litem opined that she was "fine returning to the agreed [parenting plan] of

[the Circuit Court] allowing [Mother] to have parenting time again, allowing her to have communications [with the children],” while also emphasizing that “at some point” the prohibition on speaking about the case to the children had to “get through” to Mother. Mother’s counsel then stated to the trial court, “now that I know there is a criminal contempt down, I, I’m not going to let [Mother] testify today as part of my motions.” The trial court noted that not testifying was “probably going to put [her] at a pretty significant disadvantage when there are allegations about her statements.” The parties then agreed to take a recess to have a discussion among themselves.

Following the recess, the children testified in chambers. Both children recounted their recent visit with Mother in New Hampshire. H.B. testified that Mother talked to him about “the court thing,” which he knew was prohibited. H.B. maintained that he desired to continue living in Tennessee and that he shares this with Mother “all the time.” H.B. related that Mother does not care whether he lives in New Hampshire, and does not pressure him to do so, but tried to persuade S.B. to live there. According to H.B., the maternal grandmother told S.B. that she could choose where to live despite the fact that the family “went through the whole court thing to specifically live with [Father].” S.B. testified that the maternal grandmother suggested at the airport that she should “throw a fit” and walk slowly to avoid returning to Father in Tennessee. S.B. recalled that Mother told her she would be happier living in New Hampshire and that these types of discussions took place daily during the weeklong visit. S.B. then told Mother she wanted to live with her in New Hampshire because she felt pressured to say so. In reality, S.B. does not desire to live in New Hampshire. S.B. characterized the various gifts Mother gave her during the visit as “probably” bribes. H.B. confirmed that the maternal grandmother escorted the children to the airplane for the flight back to Tennessee.

Mother’s counsel proceeded to call Father as a witness. Father testified that, after spring break, the children were returned to him as required by the agreed parenting plan, albeit “with difficulty.” He confirmed that, by then, he had lived in Cumberland County, Tennessee, for about two years. The parties waived closing arguments. The guardian ad litem stated that her position was not changed by the testimony. Mother’s counsel stated, “I’ve got two motions that are before the Court and that’s what we’re here on, I guess.” The trial court advised that it interpreted Mother’s motion to dissolve the ex parte order to suspend contact as a request for a hearing on said ex parte order and that the parties had taken their “opportunity to go through the proof on that issue.” The trial court then issued its ruling from the bench. As for Mother’s motion to transfer, the court acknowledged that the parties no longer resided in Fentress County, but reasoned as follows:

[T]he Court could, in its discretion, look at the possibility of transferring the case. However, in the interest of judicial economy and where we are, I don’t know why it would make sense.

Certainly, I think that is a discretionary issue. It’s pretty clear, I think, under

the law that a court who originally has jurisdiction in a custody or a [dependency and neglect] case retains that until those cases are resolved or until they're transferred and any after-the-fact motions or issues that arise. I don't think there's a reason to transfer the case, so I'm going to deny that motion.

As to Mother's motion to dissolve the March 29, 2022 ex parte order to suspend contact with her, the trial court ruled that the issues underlying the order suspending contact remained, although Mother could "very easily" remedy them by ceasing to question S.B. about her residential preference. The trial court recalled previously ordering Mother not to talk to the children about the case and also referenced the Circuit Court's order not to discuss the litigation with them. The trial court opined that it "very much want[ed] [Mother] to have an opportunity to spend time with her children and be part of [their] lives," but that would not happen until the court had "some reasonable degree of certainty that [Mother] is not going to continue to badger at least one of her children." The court invited the parties' "suggestions as to how [the court] might get that point across to [Mother] that she needs to . . . completely quit discussing the case with either of her children."

The trial court then ruled that the children's unrefuted testimony established beyond a reasonable doubt that Mother knowingly and willfully "violated the order of this Court and has done so on more than one occasion throughout the entire trip when these children were visiting with her." The court held that Mother was in criminal contempt and sentenced her to ten days incarceration for each of the five visitation days during which she discussed the litigation and pressured S.B. to live with her instead of with Father, for a total of fifty days incarceration. However, the trial court suspended the sentence. The court reiterated that it could later revisit the issue of Mother's contact with the children if she were "to present something to the Court that would give [] some reasonable anticipation that she [will] not do what she's been doing and visit with her children in a positive manner." The trial court's rulings were set forth in an order entered July 14, 2022, denying Mother's two motions and finding her in criminal contempt. Mother appealed.

II. ISSUES

We consolidate and restate the seven issues Mother raises on appeal as follows:

- A. Whether the trial court had subject matter jurisdiction.
- B. Whether the trial court erred in ruling on Father's motion for criminal contempt at the May 23, 2022 hearing.
- C. Whether the trial court erred in denying Mother's motion to dissolve the ex parte no-contact order entered against her.

D. Whether the trial court erred in denying Mother's motion to transfer.

III. STANDARD OF REVIEW

We review a non-jury case de novo upon the record, with a presumption of correctness as to the findings of fact unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). This presumption of correctness applies only to findings of fact and not to conclusions of law. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996). The trial court's conclusions of law are subject to a de novo review with no presumption of correctness. *Blackburn v. Blackburn*, 270 S.W.3d 42, 47 (Tenn. 2008); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The specific standards of review applicable to the issues on appeal are outlined below:

“Whether a court has subject matter jurisdiction over a case is a question of law that we review de novo with no presumption of correctness.” *Morgan Keegan & Co., Inc. v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013) (citing *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012)).

As our Supreme Court articulated in *State v. Beeler*:

A person charged with criminal contempt is presumed innocent, and guilt must be proven beyond a reasonable doubt. *Black v. Blount*, 938 S.W.2d 394, 399 (Tenn. 1996); *Robinson v. Air Draulics Eng'g Co.*, 214 Tenn. 30, 377 S.W.2d 908, 912 (1964). Once convicted, however, the contemnor loses the presumption of innocence and bears the burden of overcoming the presumption of guilt on appeal. *Black*, 938 S.W.2d at 399; *Robinson*, 377 S.W.2d at 912. Thus, appellate courts do not review the evidence in a light favorable to the accused. *Thigpen v. Thigpen*, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993). A conviction will be reversed for insufficient evidence only when the facts in the record, and any inferences that may be drawn therefrom, are insufficient as a matter of law for a rational trier of fact to find the accused guilty of the crime beyond a reasonable doubt. *Black*, 938 S.W.2d at 399; Tenn. R. App. P. 13(e).

State v. Beeler, 387 S.W.3d 511, 519 (Tenn. 2012).

“An abuse of discretion occurs when the trial court . . . appl[ies] an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice.” *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011).

IV. DISCUSSION

A.

A challenge to a court's subject matter jurisdiction calls into question "the court's 'lawful authority to adjudicate a controversy brought before it,' and, therefore, should be viewed as a threshold inquiry." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012) (internal citation omitted) (citing *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)). On appeal, Mother implies that the trial court lacked jurisdiction to hold her in criminal contempt because it was "enforc[ing] an order and [agreed] parenting plan entered by the Circuit Court." Mother states that the trial court "obviously ha[d] the authority and power to enforce its own orders."

Tennessee Code Annotated section 16-1-103 provides: "For the effectual exercise of its powers, every court is vested with the power to punish for contempt, as provided for in this code." The courts are empowered to inflict punishments for contempt of court for the "willful disobedience or resistance of any . . . party . . . to any lawful writ, process, order, rule, decree, or command of such courts[.]" Tenn. Code Ann. § 29-9-102(3). More specifically, a juvenile court may punish contempt of court by imposing a fine or imprisonment for disobeying a court order or for obstructing or interfering with court proceedings or the enforcement of the court's orders. Tenn. Code Ann. § 37-1-158; *see also State v. Ream*, No. M2007-00264-COA-R3-JV, 2008 WL 4367457, at *2 n.2 (Tenn. Ct. App. Sept. 18, 2008) (noting that the juvenile court has "the same authority as circuit or chancery court" with regard to contempt).

The record reveals that, just as in Father's ex parte motion to suspend contact and for criminal contempt, the trial court's March 29, 2022 ex parte order suspending contact with Mother did not specify which of the trial court's order(s) Mother violated by discussing the case with the children. Mother did not object or otherwise make this point at trial. No such order is in the appellate record.¹ However, the parties do not dispute that *both* the trial court and the Circuit Court had previously entered a prohibition on discussing the case with the children. On appeal, Mother concedes, "[t]here is no question that communication with the children about legal proceedings was a concern and was raised in both [the] Circuit Court order and at some time by the Juvenile Court." In its ruling and in the final order appealed from, the trial court specifically referenced its own prior orders prohibiting Mother from discussing the case with the children. The finding of criminal contempt against Mother in the order appealed from reads, "there is more than sufficient

¹ Again, the appellate record does contain the Circuit Court's March 23, 2022 order prohibiting Mother and Father from discussing the case with the children.

proof in the record to prove beyond a reasonable doubt that Mother has committed criminal contempt by willfully . . . failing to follow *the order of this Court*.” We conclude that the order appealed from shows that the trial court found Mother in criminal contempt of the trial court’s own order. Therefore, we reject Mother’s argument that the trial court lacked subject matter jurisdiction.

B.

Here, the trial court found Mother in indirect criminal contempt of its previous order not to discuss the litigation with the children. Contempt is direct when it occurs in the court’s presence and indirect when it does not. *Beeler*, 387 S.W.3d at 520 (citing *Black*, 938 S.W.2d at 398). Although a court may take summary action when the contemptuous conduct occurs before the court, indirect contempt requires certain procedural protections. *Id.* Parties facing criminal contempt charges must “be given explicit notice that they are charged with criminal contempt and must also be informed of the facts giving rise to the charge.” *Long v. McAllister-Long*, 221 S.W.3d 1, 13 (Tenn. Ct. App. 2006). A criminal contempt notice must “(A) state the time and place of the hearing; (B) allow the alleged contemner a reasonable time to prepare a defense; and (C) state the essential facts constituting the criminal contempt charged and describe it as such.” Tenn. R. Crim. P. 42(b)(1). Essential facts are those which:

(1) allow the accused to glean that he or she is being charged with a crime, rather than being sued by an individual, (2) enable the accused to understand that the object of the charge is punishment—not merely to secure compliance with a previously existing order, and (3) sufficiently aid the accused to determine the nature of the accusation, which encompasses the requirement that the underlying court order allegedly violated by the accused is itself clear and unambiguous.

McClain v. McClain, 539 S.W.3d 170, 219 (Tenn. Ct. App. 2017) (citation omitted).

Mother maintains that she was never served the motion for criminal contempt. She contends that when she entered the courtroom on May 23, she had no idea Father’s motion for criminal contempt was under consideration. Mother argues that, therefore, she was deprived of due process because she did not receive proper notice and was deprived the opportunity to be fully and fairly heard. “The essence of procedural due process is notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Manning v. City of Lebanon*, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003).

The record shows that Mother did not object or move for a continuance when she first learned of the pending motion for criminal contempt against her. Mother’s counsel then stated to the trial court, “now that I know there is a criminal contempt down, I, I’m

not going to let [Mother] testify today as part of my motions.” The trial court noted that not testifying was “probably going to put [Mother] at a pretty significant disadvantage when there are allegations about her statements.” Again, if Mother was unprepared to address the criminal contempt motion, she did not object or move for a continuance. The parties then held an off-record discussion among themselves. We cannot know what was discussed during the recess, but it was immediately followed by the children’s unrefuted testimony. It is well-settled that “[t]his Court is not required to grant relief ‘to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.’” *Glass v. SunTrust Bank*, 523 S.W.3d 61, 79 (Tenn. Ct. App. 2016) (quoting Tenn. R. App. P. 36(a)). Under these circumstances, we conclude that Mother has waived any assignment of error from the trial court’s hearing and ruling on Father’s motion for criminal contempt at the May 23 hearing.

C.

Mother points out that the effect of the trial court’s final order is a denial of any contact between her and the children. On appeal, she characterizes the trial court’s action as a modification of the agreed parenting plan incorporated in the Circuit Court’s March 23, 2022 order. She criticizes Father’s failure to plead a material change in circumstances and assigns as error the trial court’s failure to weigh the best interest factors set forth in Tennessee Code Annotated section 36-6-106(a). Mother’s argument misses the mark and mischaracterizes the proceedings below. Father’s initiating pleading was an *ex parte* motion for a no-contact order against Mother and a motion for criminal contempt, not a petition for modification of a parenting plan. Based on our review of the children’s unrefuted testimony—which Mother does not challenge on appeal—we conclude that the evidence does not preponderate against the trial court’s finding that the issues underlying the no-contact order, including Mother’s badgering of S.B. and disregard of the order prohibiting discussion of the case, remained. Therefore, we affirm the trial court’s denial of Mother’s motion to dissolve the *ex parte* no-contact order.

We again note the trial court’s observation that Mother could very easily remedy the issues that resulted in the no-contact order, and the trial court’s stated hope that Mother would “have an opportunity to spend time with her children and be part of [their] lives.” Likewise, at the hearing, the guardian ad litem stated that she would support restoring Mother’s parenting time as negotiated in the agreed parenting plan if Mother corrected her actions. In his appellate brief, Father states that Mother “receiving some of her parenting time back” or communicating with the children “is what everyone in this case would like to see happen.” At the end of the hearing, the trial court advised that it was open to revisiting this matter. With these considerations in mind, and given the year that has passed since the final order, we remand for a new evidentiary hearing on the *ex parte* order suspending Mother’s contact with the children.

D.

Finally, Mother claims that the trial court erred by denying her motion to transfer the case to either the Juvenile Court or the Circuit Court for Cumberland County because it “never truly explained its reasoning.” This portion of the litigation in Fentress County apparently commenced when a petition alleging the children’s dependency and neglect was filed in the trial court against Mother. Under Tennessee Code Annotated section 37-1-103(a)(1), the juvenile court has exclusive original jurisdiction of dependency and neglect proceedings.

Section 37-1-112(a) provides for the transfer of cases from the county in which a proceeding has been commenced to the child’s county of residence on motion by a party or on the court’s own motion:

(a) If the child resides in a county of this state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion after a finding of fact, may transfer the proceeding to the county of the child’s residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding may be transferred if the child has been adjudicated delinquent or unruly, or neglected or abandoned and other proceedings involving the child are pending in the juvenile court of the county of the child’s residence.

Tenn. Code Ann. § 37-1-112(a). The statute requires the juvenile court to make a finding of fact regarding the requested transfer. *Id.*; *In re Jada C.H.*, No. W2011-02542-COA-R3-JV, 2012 WL 4086120, at *7–8 (Tenn. Ct. App. Sept. 18, 2012). Here, the trial court’s order provided:

The Motion to Transfer the case to Cumberland County is denied. The Court finds that while the case could be transferred to Cumberland County, it is at the discretion of the Court to do so and, in the interest of judicial economy, it is best to have the case remain in Fentress County given the length of time and complexity of the issues at bar.

Upon review, we see that the trial court explained its reasoning in the order and made a finding of fact. We discern no abuse of the trial court’s discretion on the issue of transfer. Therefore, we affirm the decision to deny Mother’s motion to transfer.

V. CONCLUSION

For the foregoing reasons, we affirm the judgment of the juvenile court. The case

is remanded for a new evidentiary hearing on the ex parte order suspending Mother's contact with the children and for such further proceedings as may be necessary and consistent with this opinion. Costs of the appeal are taxed to the appellant, Brittanie Cilley.

JOHN W. McCLARTY, JUDGE